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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/047, 252 03/24/98 MELLOTT

P S1022/8047

WM02/1206

EXAMINER

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BOSTON MA 02210

PENDLETON, B

ART UNIT	PAPER NUMBER
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2644

DATE MAILED:

12/06/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)
	09/047,252	MELLOTT, PASCAL
	Examiner	Art Unit
	Brian T. Pendleton	2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 9/14/00.
- 2a) This action is FINAL. 2b) This action is non-final.
- .3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 2 and 18 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3-17 and 19-23 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____ .
- 16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)
- 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 20) Other: _____

Response to Arguments

Applicant's arguments filed 9/14/00 have been fully considered but they are not persuasive. Applicant argues that Smith is a feedforward system and the present invention is a feedback system whereby the output of the attenuator is fed back to a control circuit. However, independent claims 1 and 17 do not recite that the system does indeed have a feedback configuration. With respect to Applicant's contention that there is no "circuitry, that receives the second audio signal, for providing an output signal in response to the amplitude of the second signal" (element 220 of the present invention), Examiner points to elements 50a-50d and 60 of Smith, which receive a second audio signal and provide an output signal in response to the amplitude of the second signal. In this case, the second signal is output from the left and right channels 102 and 100. The present claims 1 and 17 do not specify where the second signal has to originate from other than from a circuit that receives the first audio signal which can mean the circuitry in the left and right channels of Smith.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 7, 8, 9, and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith, US Patent 5,533,136. Smith discloses a circuit for attenuating commercial interruptions comprising receiving circuitry 100 and 102, amplitude limiting

circuitry comprising signal comparators 50a-50d which have rectifier 52a and lowpass filter 54a for providing an output signal in response to the input signal, comparator 56a for providing a control signal to digital logic circuit 60 which sends a control signal to attenuators 80. Inherently, the system has user volume control means since it is part of a radio system. Per claims 3 and 4, the attenuator 80 has digital hardware circuitry (figure 4, TTL control Q1). Per claims 7 and 8, there is disclosed a comparator, attenuator and a rectifier and low pass filter. Per claim 9, the comparator 56a is inherently a current/sinking comparator. Regarding claim 15, Smith's invention is directed to radio broadcast.

Claims 1, 17, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Joseph et al, US Patent 5,363,147. Joseph et al disclose a signal processor 3 which receives audio signals, attenuator 10 which provides a second audio signal, peak detector 16 and ripple filter 18 which provide a (feedback) output signal in response to the amplitude of the second signal, comparator 20, which provides a control signal in response to the feedback output signal and a reference signal V_{ref} , said control signal controlling the attenuator 10.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith. Smith discloses a circuit for automatically attenuating broadcast signals comprising receiving circuitry 100 and 102, amplitude limiting circuitry comprising signal comparators 50a-50d which have rectifier 52a and lowpass filter 54a for providing an output signal in response to the input signal, comparator 56a for providing a control signal to digital logic circuit 60 which sends a control signal to attenuators 80. However, Smith does not explicitly disclose that the circuitry can be implemented in DSP algorithms or software routines. It would have been obvious to one of ordinary skill in the art at the time of the invention to implement the circuitry of Smith using DSP or software routines, since it was a well established practice at that time.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Dasilva, US Patent 4,654,610. Smith discloses a circuit for automatically attenuating broadcast signals comprising attenuating means 80. However, Smith does not disclose that element 80 is a multiplying digital-to-analog converter, which is interpreted as a switched resistive control circuit (see page 11 line 11 of the specification). Dasilva discloses a switched resistive control circuit. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the circuit of Dasilva in the invention of Smith. As stated in the abstract, the use of the signal attenuator of Dasilva provides selectable levels of signal attenuation, which would allow more flexibility than discrete levels, a desirable feature.

Claims 11-14, 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith. Examiner makes Official Notice that broadcast signals can be interpreted

as radio, satellite, television, cable, et cetera. Smith only discusses radio signals, however, in light of the Official Notice, it would have been obvious to one of ordinary skill in the art at the time of the invention to extend the functionality of the Smith invention to satellite and television signals since both types of signals are also subjected to volume level fluctuations.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. Pendleton whose telephone number is (703) 305-9509. The examiner can normally be reached on M-F 7-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W. Isen can be reached on (703) 305-4386. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-9508 for regular communications and (703) 308-5403 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Brian T. Pendleton
Examiner
Art Unit 2644

btp
November 29, 2000



FORESTER W. ISEN
SUPERVISORY PATENT EXAMINER
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